THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 15647 of 2006

O r d e r:

The petitioner's father while working as Senior Section Supervisor (O) in the respondent-BSNL, Nellore District, died in harness on 25.07.2001, leaving behind his wife, one son and three daughters, including the petitioner. Pursuant to his death, the petitioner being the legal heir, made representation to the respondents to appoint her on compassionate grounds in Group-D post by relaxing the recruitment rules. The 1st respondent vide letter dated 13.07.2004 informed the petitioner that the High Power Committee, which met on 08.07.2004, examined her case and rejected her request for appointment on compassionate grounds stating that the family is not in distress. Thereafter, the mother of the petitioner made a representation to the respondents on 08.11.2004 for reconsideration of the case of the petitioner for appointment on compassionate grounds or at least to appoint her on daily wages, but the same was also rejected by the 3rd respondent, vide letter dated 04.04.2005. Assailing the said orders, the petitioner filed the present writ petition.

The learned counsel for the petitioner submits that the father of the petitioner before his death was seriously ill, and his family had spent lot of amount for his treatment, and the amounts received towards his death benefits including gratuity were spent to clear the debts, and even now the amounts taken by mortgaging the house and by executing promissory notes still remain uncleared. He submitted that since after the death of the father of the petitioner, the petitioner's family was in financial distress as there was no other earning member

than the deceased, the petitioner made representations to the respondents to provide her suitable employment on compassionate grounds, but the respondents vide the orders impugned in the writ petition, informed the petitioner that the High Power Committee, examined the case of the petitioner, and rejected her request for appointment on compassionate grounds stating that the family is not in financial distress, which is illegal and arbitrary. He thus prayed that the impugned order be set aside and the respondents be directed to provide the petitioner suitable employment on compassionate grounds.

A counter affidavit is filed by the respondents. Reiterating the counter averments, learned Standing Counsel appearing on behalf of the respondent-BSNL contended that there is no evidence produced by the petitioner to support her contention that their family is deeply in debts and the amounts received towards death benefits of her father were spent to clear the said debts, and that still some debts remain uncleared. She submitted that an amount of Rs.4,73,431/- in lump sum was paid to the family of the petitioner upon the death of her father towards death benefits, and the mother of the petitioner at present is getting family pension of Rs.4,575/- per month, corresponding dearness relief (subject to increase from time to time) and the family of the petitioner has also got own house. She further submitted that the High Power Committee examined the request of the petitioner for compassionate appointment, based on objective assessment of the financial condition of the family i.e. her assets and liabilities, the size of the family and essential needs of the family and other factors, as provided in O.M. No.14014/6/94-Estt. (D), dated 09.10.1998 (Scheme for Compassionate Appointment under the Central Government), and rejected the request of the petitioner, and accordingly the respondents

informed the petitioner vide the order impugned in the writ petition. The family pension amount of Rs.4,575/- per month being received is more than sufficient for the family of the petitioner to lead a happy life, and therefore, the petitioner cannot be allowed to contend that upon the death of her father, their family plunged into deep financial distress, and prayed for dismissal of the writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-BSNL and perused the material on record, including the scheme for compassionate appointment under the Central Government.

The Government issued revised consolidated instructions, framing the Scheme for Compassionate Appointment under the Central Government, in O.M. No.14014/6/94-Estt. (D), dated 09.10.1998. The object of the scheme is to grant appointment on compassionate grounds to a dependant family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency. In fact, the High Power Committee constituted by the respondents examined the request of the petitioner for compassionate appointment in the light of the above scheme, and rejected the request of the petitioner on the ground that the family of the deceased is not in financial distress.

The law is well settled that compassionate appointment cannot be claimed as a matter of right, but is granted to enable the family of the deceased to tide over the sudden crises that befalls on the death of the sole breadwinner.

The apex Court in **Shri Umesh Kumar Nagpal v. State of Haryana and others**[1], has noted the objects of granting

compassionate employment, and they are:

(i) To enable the family to tide over the sudden crisis by the death of the sole bread winner;
(ii) To relieve the family of the financial destitution and to help to get over the emergency. The object is not to give a member of such family a post.
II. Mere death of an employee in harness does not entitle his family to such source of livelihood.
III. The Government or public authority has to examine the financial condition of the family of the deceased, and only if it is satisfied, but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.
IV. The only ground, which can justify compassionate appointment, is the penurious financial condition of the family at the time of death of the employee. Offering employment irrespective of the financial condition of the family is legally impermissible.
V . Consideration for compassionate employment is not a vested right to be exercised at any time in future.

In **General Manager (D & PB) & Ors. V. Kunti Tiwary & Anr.**[2], the apex Court held that in the matter of providing compassionate employment to the dependant of a deceased, the criteria of penury has to be applied, and only in cases where the condition of the family is "without any means of livelihood" and "living hand to mouth" that compassionate appointment was required to be granted. In a very recent judgment in **State Bank of India v. Jaspal Kaur**[3], the apex Court held that a major criterion while appointing a person on compassionate grounds should be the financial condition of the family the deceased person left behind.

Thus, from the law as settled above, it is clear that the while considering the grant of compassionate appointment, the financial destitution of the family has to be kept in mind. Therefore, it may be examined whether the High Power Committee of the respondents, was justified in rejecting the request of the petitioner for grant of compassionate appointment on the ground that the family of the deceased was not in financial distress.

Pursuant to the death of the father, as can be seen from the counter filed by the respondents and the material produced by them,

the mother of the petitioner, which in fact, is not disputed by the petitioner, in all an amount of Rs.4,73,431/- was arrived at towards terminal benefits of the deceased, and the same was paid to the wife of the deceased, namely the mother of the petitioner. Apart from the said sum, it is submitted by the respondents that the petitioner's mother was also sanctioned family pension, and that at present, she is getting an amount of Rs.4,575/- per month towards family pension, and the family of the petitioner also owns a house. The quantum of terminal benefits paid by the respondents to the wife of the deceased, and the amount of Rs.4,575/- per month, which she is now said to be getting towards family pension, gauged from the present day cost of living, cannot be said to be insufficient for a decent living, nor can she be allowed to contend that upon the death of their father, their family plunged into financial distress and that they are leading a life of "hand to mouth".

Though the petitioner contends that they have spent the amounts received for discharging the debts incurred by them for the treatment of their father, she failed to produce any material before this Court in support of her contention. Hence, the petitioner cannot contend that they had spent the amounts received by them towards the terminal benefits of their father, for discharge of the loans taken by them for his treatment.

In the above view of the matter, no exception can be taken to the impugned orders of the respondents, communicating the decision of the High Power Committee, rejecting the request of the petitioner for providing compassionate grounds stating that the family of the deceased is not in financial distress.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Dated: 28th September, 2007.
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[1] 1994 (4) SCC 138
[2] (2004) 7 SCC 271
[3] 2007 AIR SCW 1044